

Wage and Hour Division, Labor

§ 794.3

APPLICATION OF EXEMPTION TO EMPLOYEES

- 794.135 Employees who are exempt.
- 794.136 Employees whose activities may qualify them for exemption.
- 794.137 Effect of activities other than "wholesale or bulk distribution of petroleum products."
- 794.138 Workweek unit in applying the exemption.
- 794.139 Exempt and nonexempt activities in the workweek.
- 794.140 Compensation requirements for a workweek under section 7(b)(3).
- 794.141 Workweeks when hours worked do not exceed 12 in any day or 56 in the week; compensation requirements.
- 794.142 Special compensation when overtime in excess of 12 daily or 56 weekly hours is worked in the workweek.
- 794.143 Work exempt under another section of the Act.

RECORDS TO BE KEPT BY EMPLOYERS

- 794.144 Records to be maintained.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

SOURCE: 35 FR 16510, Oct. 22, 1970, unless otherwise noted.

Subpart A—General

§ 794.1 General scope of the Act.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, equal pay and child labor requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 794.2 Purpose of this part.

This part 794 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of section 7(b)(3) of the Act. This section provides a limited partial exemption from the overtime provisions of section 7 of the Act (but not from the minimum wage, child labor, equal pay, or recordkeeping provisions) with respect to employees of an independently owned and controlled local enterprise engaged in the wholesale or bulk distribution of petroleum products, if the enterprise meets certain specified conditions. This exemption was added to the Act by the 1966 Amendments, which repealed a complete overtime exemption previously available for employees of such enterprises (section 13(b)(10) of the Act as amended in 1961). It is the purpose of this part to make available in one place the interpretations of the law governing this exemption which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act.

§ 794.3 Matters discussed in this part.

This part primarily discusses the meaning and application of the section 7(b)(3) exemption. The meaning and application of other provisions of the Fair Labor Standards Act are discussed only to make clear their relevance to the 7(b)(3) exemption and are not considered in detail in this part. Interpretations published elsewhere in this title deal with such subjects as the general coverage of the Act (part 776 of this chapter), methods of payment of wages (part 531, subpart C, of this chapter), computation and payment of overtime compensation (part 778 of this chapter), computation and payment of overtime compensation (part 778 of this chapter), retailing of goods or services (part 779 of this chapter), hours worked (part 785 of this chapter), and child labor provisions (part 570 of this chapter). Regulations on recordkeeping are contained in part 516 of this chapter, and regulations defining exempt bona fide executive, administrative, and professional employees are contained in part 541 of this chapter. The equal pay provisions are discussed in part 800 of

this chapter. Regulations and interpretations on other subjects concerned with the application of the Act are listed in the table of contents to this chapter. Copies of any of these documents may be obtained from any office of the Wage and Hour Division.

§ 794.4 Significance of official interpretations.

The interpretations of the law contained in this part are official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met in the consideration of the exemption discussed. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 or to any Regional or Area Office of the Division.

§ 794.5 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this part are cited where it is believed they may be help-

ful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift*, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Plan 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950, 15 FR 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 794.6 Reliance on interpretations.

As previously stated, the interpretations of the law contained in this part are official interpretations. So long as they remain effective and are not modified, amended, rescinded or determined by judicial authority to be incorrect, they may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (63 Stat. 910, 29 U.S.C. 251 *et seq.*, discussed in part 790 of this chapter). In addition, the Supreme Court has recognized that such interpretations of this Act "provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (*Skidmore v. Swift*, 323 U.S. 134).